

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8

FIRELANDS REGIONAL MEDICAL CENTER

Employer

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, UAW

Petitioner

Case Nos. 8-RC-16446  
8-RC-16447  
8-RC-16448  
8-RC-16449  
8-RC-16450

**DECISION AND DIRECTION OF ELECTIONS**

Upon petitions for elections filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, including post-hearing briefs filed by the parties, the undersigned finds<sup>1</sup> the following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.<sup>2</sup>

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<sup>1</sup> I further find that: the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved (Petitioner) claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act

<sup>2</sup> With the exception of the findings and conclusions I have made herein, the units are as agreed upon by the parties.

### **CASE 8-RC-16446**

All full-time and regular part-time skilled maintenance employees employed by the Employer at its facilities located at 1101 Decatur Street, Sandusky (Main Campus), 1912 Hayes Street, Sandusky (South Campus), 2020 Hayes Street, Sandusky, and “behavioral offices” located in Upper Sandusky, Fostoria, Tiffin, Willard, Norwalk, Bellevue, Freemont, Vermillion and Sandusky, but excluding the Employer’s physician offices, in the following classifications: clinical engr coord, bio-med tech (supplied), chief tech dialysis (including supplied),<sup>3</sup> construction mechanic, electronics technician, painter, maintenance mech I, maintenance mech II, and van driver/maintenance; but excluding all RNs, business office clerical employees, support services employees, technical employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

### **CASE 8-RC-16447**

All full-time and regular part-time business office clerical employees employed by the Employer at its facilities located at 1101 Decatur Street, Sandusky (Main Campus), 1912 Hayes Street, Sandusky (South Campus), 2020 Hayes Street, Sandusky, and “behavioral offices” located in Upper Sandusky, Fostoria, Tiffin, Willard, Norwalk, Bellevue, Freemont, Vermillion and Sandusky, but excluding the Employer’s physician offices, in the following classifications: accounts payable coord, accounts receivable spec, application support tech, benefits specialist, cashier, charge analyst, computer operator, financial counselor, hardware support tech, insurance biller, inventory control buyer, pat accts claims repre, pat financial counselor, patient accts coord, payroll coordinator, surgical buyer, and switchboard operator; but excluding all RNs, skilled maintenance employees, support services employees, technical employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

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<sup>3</sup> The parties stipulated that “supplied” employees in certain job classifications who meet the NLRB’s voting eligibility standards and criteria, as set forth in **Davison-Paxon, 185 NLRB 21 (1970)** or **Marquette General Hospital, 218 NLRB 713 (1975)**, should be eligible to vote. I accept the parties’ stipulation.

“Supplied” employees are those employees not employed directly by the Employer, but rather are furnished to the Employer by other companies, most often temporary agencies on an as needed basis. “Supplied” employees work along side the Employer’s employees, receive daily work assignments from, and may be counseled and disciplined by, the Employer’s employees. “Supplied” employees may be converted to regular employees if an employee and the Employer so desire, and such conversions have occurred “with some regularity.”

For some job classifications, like this one, the Employer utilizes “supplied” employees to supplement those employees it employs outright in this position. This circumstance is noted in this decision with the designation after the job classification as “(including supplied).” For other job classifications, the Employer appears to use only “supplied” employees and does not employ any employees directly. Such instances are noted in this Decision with the designation “(supplied)” after the job title.

Neither party asserts that the supplied employees in the dietary and housekeeping departments should be eligible to vote.

### CASE 8-RC-16448

All full-time and regular part-time and contingent RNs employed by the Employer at its facilities located at 1101 Decatur Street, Sandusky (Main Campus), 1912 Hayes Street, Sandusky (South Campus), 2020 Hayes Street, Sandusky, and “behavioral offices” located in Upper Sandusky, Fostoria, Tiffin, Willard, Norwalk, Bellevue, Freemont, Vermillion and Sandusky, but excluding the Employer’s physician offices, in the following classifications: charge nurse/clinic coordinator, nurse coordinator/cancer center, RN/nurse coordinator, shift supervisor, relief shift manager,<sup>4</sup> supervisor surgical services/RN cardiopulmonary spec, care coordinator, charge nurse, coord CME/ allied pro edu, education specialist, family life ser educator, family life serv coord, industrial nurse,<sup>5</sup> industrial nurse coord, infection control officer, instructor, intake specialist, lactation educator, physician assistant, psych nurse – RN, registered nurse (including supplied), registered nurse (PRN), RN (cancer center), RN (cardiac rehabilitation), RN (patient educator), RN (radiology), quality services spec – RN, and utilization review coord; but excluding all skilled maintenance employees, business office clerical employees, support services employees, technical employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

### CASE 8-RC-16449

All full-time and regular part-time support services employees employed by the Employer at its facilities located at 1101 Decatur Street, Sandusky (Main Campus), 1912 Hayes Street, Sandusky (South Campus), 2020 Hayes Street, Sandusky, and “behavioral offices” located in Upper Sandusky, Fostoria, Tiffin, Willard, Norwalk, Bellevue, Freemont, Vermillion and Sandusky, but excluding the Employer’s physician offices, in the following classifications: maintenance assistant, pharmacy technician, executive support secretary, medical staff administrative secretary, professional staff secretary,<sup>6</sup> admin support secretary,<sup>7</sup> activity assistant, admissions/discharge coor, benefits assistant, cancer center technician, clk-recp-rehab (supplied), cardiopulmonary secretary, central scheduler, cert sterile proc tech, CHC office assistant, clerk, clerk-receptionist, clerk-recep/phlebotomist, clerk-receptionist/rad, clerk-trans/radiology, clerk-receptionist/fam prac, cook, coord senior services, courier, darkroom tech, dialysis cntr office asst, diet clerk, dietary aide, ER records clerk, education secretary, electrodiagnostic tech, emergency room clerk, file clerk, hostess,

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<sup>4</sup> In Joint Exhibit 6 this position is listed as “relief shift manager.” In the parties respective briefs, however, both parties refer to this position as “relief shift supervisor”

<sup>5</sup> The parties agree that the Employer’s industrial RNs, who are physically located at two local automotive plants called Delphi and Visteon, should be included in the RN unit.

<sup>6</sup> The Employer refers to this position in its brief as “medical staff coordinator.”

<sup>7</sup> While listed on page 6 of 7 in Joint Exhibit 6 as excluded as a leader or supervisor, this position is also listed in a separate stipulation in Joint Exhibit 6 as included in the unit to the extent employees meet the Board’s eligibility standards in **Davison-Paxon and Marquette General Hospital**. Therefore, I shall assume this position’s listing on page 6 of 7 in Joint Exhibit 6 is an error and include it in the support services unit. Moreover, there is no evidence that this position is supervisory.

housekeeping attn/courier, housekeeping attn/courier (floors), incinerator operator, kitchen helper, lead CST technician, lead registrar, linen room attendant, mailroom clerk, marketing secretary, mat mgmt secretary, materials attendant, med transcript I, med transcript II, med rec corresp clerk, medical assistant, medical education coord, medical records clerk I, medical records clerk II, nurse intern, nursing orderly I, nursing orderly II, nursing orderly II (PRN), nursing secretary, O/P orders file clerk, office manager, PST clerk, pat care tech-dialysis, pathology transcript, patient registrar, phlebotomist/venipunctur, printer, purchasing assistant, quality office assistant, radiology aide, radiology student, rec/trans (cancer center), receiver, receptionist/transcriptio, recruitment assistant, rehabilitation tech, residence director, resp technician I, STNA, secretary, secretary (CMH), secretary/receptionist, secretary/transcriptionist, sterile processing tech, stock clerk (dietary), surgery clerk, TQM data specialist, trans vehicle driver, transporter, trauma registrar, ward clerk, ward clerk (PRN), clerk-transcpt, administrative service analyst, and transport dispatcher;<sup>8</sup> but excluding all RNs, skilled maintenance employees, business office clerical employees, technical employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

#### **CASE 8-RC-16450**

All full-time and regular part-time technical employees employed by the Employer at its facilities located at 1101 Decatur Street, Sandusky (Main Campus), 1912 Hayes Street, Sandusky (South Campus), 2020 Hayes Street, Sandusky, and “behavioral offices” located in Upper Sandusky, Fostoria, Tiffin, Willard, Norwalk, Bellevue, Freemont, Vermillion and Sandusky, but excluding the Employer’s physician offices, in the following classifications: public relations coordinator, publications writer, registered respiratory therapist (RRT),<sup>9</sup> respiratory technician II (CRT), charge registered respiratory therapist, cardiopulmonary rehabilitation and patient education therapist, clinical educator/registered respiratory therapist, coding compliance coordinator, coordinator coding/clerical services, coordinator/transcription services, education outreach coordinator, echocardiographer, surgical technician, computer programmer/analyst, network analyst, senior network analyst, systems analyst, senior systems analyst, adj clinical fac instr/mt, cardiac cath technologist, CD/MH hotline worker, CHC clinic nurse, dosimetrist, histological tech ASCP, histological tech II (ASCP), LPN (including supplied), LPN (PRN), LPN (Endo), lead MRI technologist, mammography technologist, med technologist I, med technologist (charge), MRI technologist, nuclear med tech (reg), nuc med tech (supplied), occupational ther assist, COTA (supplied), physical therapy ass’t, PTA (supplied), paramedic, patient care technologist I, patient care technologist II,

<sup>8</sup> While not listed anywhere in Joint Exhibit 6, the parties agreed at Hearing on the record to include this position in the support services unit.

<sup>9</sup> The record contained testimony of CRTs and RRTs working at the South Campus on a PRN basis. These PRN positions were not addressed by either party at the Hearing or in Joint Exhibit 6. I find that these PRN positions are eligible to vote to the extent these positions meet the NLRB’s voting eligibility standards and criteria, as set forth in **Davison-Paxon**, 185 NLRB 21 (1970) or **Marquette General Hospital**, 218 NLRB 713 (1975).

procedure SDL facilitator, psych nurse – LPN, rad tech (cancer center), radiation ther tech (reg), radiological tech (charge), radiological technologist, sleep disorders tech, special procedures tech, tumor registrar, ultrasound tech (reg), ultrasound technologist, utilization review spec, pharmacy contract analyst, nuclear medicine tech, med records tech (ART-RHIT), quality services spec (ART-RHIT); but excluding all RNs, skilled maintenance employees, business office clerical employees, support services employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

### **EXCLUDED CLASSIFICATIONS**

The parties have agreed to exclude several job classifications from voting in any of the petitioned-for units. Nothing in the record conflicts with these stipulations, accordingly, I shall honor the stipulations and exclude from voting in any of the petitioned-for bargaining units the job classifications as follows.

Physicians: intern, psychiatrist, and resident.

Professionals: accountant, central intake therapist, phys therapist (supplied), occupational therapst (supplied), athletic trnrs (supplied), chaplain, chemical dep therapist, chemical dependency couns, chemical dependency ther, childrens com supp pro wk, children's therapist, clinical dietician, comm support program mgr, compeer program coord, CSP mgr-adult/mental hlth, CSP mgr-alternative schl, CSP mgr-chemical depend, CSP mgr-child/mental hlth, CSP mgr-hospital liaison, day emergency therapist, domestic violence coordinator, ED/prevention specialist, financial coordinator, lead medical technologist, MH/sub abuse therapist, medical librarian, medical technologist II, mental health therapist I, mental health therapist II, mental health therapist, MST therapist, outpatient therapist, partial hosp therapist, recreation therapist, registered pharmacist, registrar–bursar, rehab consultant, reimbursement analyst, social worker I (BS), social worker II (MSW), speech/language pathologi, therapeutic rec therapist, business analyst /decision support, business analyst/finance.

Security Guards: captain/security and patrolman.

“Leadership”<sup>10</sup> or supervisory positions: assistant dir school of nursing, case management coordinator, chem dependency coordinator, chief technologist, clinical system mgr, construction foreman, coordinator/pain & health reha, CSP coordinator, dietary manager, dir phys network dev/supp, dir registration services, dir contracts and mat mgmt, dir financial services, dir quality/UR services, dir

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<sup>10</sup> I am uncertain what the Employer means when it categorizes these positions as “leadership” inasmuch as the term “leadership” does not have any specific meaning under Board law.

nrsg support services, dir pharmacy services, director cancer center, director information systems, director laboratory services, director medical records svc, director plant engineering, director radiology services, director school of radiology, director support services, director behavioral health, director heart services, director school of nursing, distribution supervisor, domestic violence coordinator, exe payroll employees, executive assistant, financial systems manager, food production supvr, housekeeping supvr, inpatient/emerg ser supvr, interim VP nursing, lead comm supp program wrkr, lead histological tech, lead hskg attn/courier, lead respiratory therapis, maintenance supervisor, manager gift shop, manager P/R & benefits, mgr cardiognostic/reha, mgr physician office serv, mgr systems & development, mgr skilled and rehab, mgr respiratory therapy, mgr security/safety, mgr corporate health, mgr patient accts ser, mgr sleep laboratory, mgr spiritual care, mgr volunteer service, MST program coordinator, nurse manager, office manager, oper mgr imaging services outpatient treatment coor, partial hosp coord, QA/UR coordinator, recruiter, risk manager, senior buyer, site supervisor, sr hskg supervisor, sr speech/language path, sterile processing supvr, supv social work serv, supervisor help desk/operation, supvr cardiac cath lab, mgr registr svc, central sched, mgr housekeeping servs, and MDS/PTS coordinator/RN.<sup>11</sup>

Confidential employees: executive secretary<sup>12</sup> assistant to the chief executive officer, backup assistant to the chief executive officer, executive assistant to the chief financial officer, executive assistant -- human resources.<sup>13</sup>

There are approximately 1325 employees in all of the units found appropriate herein.

## **INTRODUCTION**

Firelands Regional Medical Center is a large, private, acute care medical center. In Case 8-RC-16446, Petitioner seeks to represent a unit of the Employer's approximately 40 skilled maintenance employees. In Case 8-RC-16447, Petitioner seeks to represent a unit of the Employer's approximately 80 to 90 business office clerical employees. In Case 8-RC-16447, Petitioner seeks to represent a unit of the Employer's approximately 350 RN employees. In Case 8-RC-16448, Petitioner seeks to represent a unit of the Employer's approximately 520 support

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<sup>11</sup> While not listed anywhere in Joint Exhibit 6, the parties agreed at the Hearing to exclude this position as supervisory.

<sup>12</sup> While listed in Joint Exhibit 6 as a classification in dispute, the Employer stated in its brief its agreement with Petitioner that this position is confidential and should not be eligible to vote. Since there is no contrary evidence, I accept the parties' agreement.

<sup>13</sup> While not listed in Joint Exhibit 6 as being excluded on the basis of their status as confidential employees, the parties entered into this stipulation at the Hearing.

services employees. In Case 8-RC-16446, Petitioner seeks to represent a unit of the Employer's approximately 325 technical employees.

FRMC is comprised of several facilities that operate as a single corporate entity<sup>14</sup> The facilities involved in the instant petitions are the Employer's Main Campus, South Campus, Hayes Professional Center and behavioral offices located in Upper Sandusky, Fostoria, Tiffin, Willard, Norwalk, Bellevue, Freemont, Vermillion and Sandusky.<sup>15</sup> The Employer also has various physician offices that are not relevant to these petitions.<sup>16</sup>

The Main Campus is located at 1101 Decatur Street in Sandusky, Ohio, and includes the following departments and services: emergency, patient care units, inpatient surgical services, behavioral health, physical medicine services, inpatient psychiatric services, inpatient chemical dependency, social services, cancer center, heart services, obstetrics, laboratory, pharmacy, physician support services, blood bank, plan engineering, radiology, sleep laboratory, support services, human resources, education and training, volunteers, pastoral care, planning and marketing.

The South Campus is located approximately one mile from the Main Campus. It is comprised of several buildings located within walking distance of each other. The main building is the former Providence hospital that FRMC acquired in early 2002, located at 1912 Hayes

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<sup>14</sup> Daniel Moncher, the Employer's executive vice president and chief financial officer for the past five years, explained that as a single corporate entity FRMC has a unified medical staff with one set of rules and regulations for all, has centralized administration, payroll and accounting, and operates with a single tax identification number and Medicare provider number for all services and operations.

<sup>15</sup> Petitioner originally petitioned to represent only those employees employed by the Employer out of the facility located at 1101 Decatur Street, Sandusky, referred to by the Employer as the Main Campus. Thereafter, but prior to the opening of the Hearing in this matter, Petitioner amended its petitions to also seek to represent employees employed by the Employer out of the facilities located at 1912 Hayes Street, and 2020 Hayes Street, in Sandusky, Ohio. After the Hearing opened, the parties entered into a stipulation on the record that, additionally, any employees in the petitioned-for job classifications working out of the Employer's "behavioral offices" located in Upper Sandusky, Fostoria, Tiffin, Willard, Norwalk, Bellevue, Freemont, Vermillion and Sandusky should be eligible to vote. As described more fully in Footnote 15, the Parties further stipulated that employees working at the Employer's various physician offices should be excluded from voting in these proceedings.

<sup>16</sup> FRMC is a subsidiary of Firelands Regional Health System. FRHS has a second subsidiary called the Firelands Fund that has two professional corporation subsidiaries: Hayes Avenue Professional Corporation and Northcoast Professional Corporation,

Avenue. There is also a dialysis center, the school of nursing, a dormitory for nursing students, and a building that formerly housed information systems and accounting. The South Campus contains the following departments and services: inpatient physical medicine and rehabilitation, physical therapy, occupational therapy, speech therapy, skilled nursing units, school of nursing and a family practice clinic. It also contains satellite operations of laboratory, pharmacy, plan engineering, radiology, support services, volunteers and pastoral care.

The Hayes Professional Center is located at 2020 Hayes Avenue approximately one mile from the Main Campus. It houses the following departments and services: outpatient mental health, outpatient chemical dependency, corporate health (industrial medicine services and work related injury treatment), the eye center, occupational health services, and the finance and billing department.

The parties are in agreement regarding the inclusion and exclusion of a large majority of the Employer's approximately two hundred job classifications involved in the petitioned-for units. There remain approximately 29 classifications still in dispute.

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which operate physician practices. The parties stipulated at Hearing that the employees working at the Employer's physician offices located in this building are not part of any unit and are ineligible to vote in these proceedings.



## **ISSUES**

### **SUPERVISORY STATUS**

The Employer contends the following positions should be included in the RN unit, contrary to the Petitioner which contends they should be excluded as supervisory: charge nurse/clinic coordinator; nurse coordinator/cancer center; RN/nurse coordinator; shift supervisor; relief shift supervisor,<sup>17</sup> and supervisor surgical services/RN. For the reasons explained in detail below, I find these are not supervisory positions under the Act and I shall include them in the RN unit.

The Petitioner contends that the following positions should be eligible to vote in the technical unit, contrary to the Employer which contends they should be excluded as supervisory: coding compliance coordinator, coding/clerical services coordinator, education outreach coordinator, transcription services coordinator, and charge registered respiratory therapist. For the reasons explained in detail below, I find these are not supervisory positions under the Act and I shall include them in the technical unit.

### **CONFIDENTIAL STATUS**

Petitioner contends the following classifications should be excluded as confidential employees, contrary to the Employer which contends they properly belong in the support services unit: executive support secretary, medical staff administrative secretary, and professional staff secretary,<sup>18</sup> For the reasons explained in detail below, I find these positions are not confidential under the Act and I shall include them in the support services unit.

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<sup>17</sup> In Joint Exhibit 6 this position is listed as “relief shift manager.” In the parties respective briefs, however, both parties refer to this position as “relief shift supervisor”

## **PROFESSIONAL STATUS**

The Petitioner contends that the following classifications should be eligible to vote in the technical unit, contrary to the position of the Employer which contends they should be excluded as professional: public relations coordinator; publications writer; registered respiratory tech.; respiratory technician II (CRT);<sup>19</sup> cardiopulmonary rehabilitation and patient education therapist; and clinical educator/registered respiratory therapist.<sup>20</sup> For the reasons explained in detail below, I find these positions are not professional under the Act and I shall include them in the technical unit.

The Employer contends that the following positions should be eligible to vote in the technical unit, contrary to the Petitioner which contends they should be excluded as professional: computer programmer/analyst, network analyst, senior network analyst, systems analyst, and senior systems analyst. For the reasons explained in detail below, I find these positions are not professional under the Act and I shall include them in the technical unit.

## **UNIT PLACEMENT**

The Petitioner contends that the following positions should be included in the technical unit, contrary to the Employer which contends they belong in the support services unit: echocardiographer; pharmacy technician; and surgical technician. For the reasons explained in detail below, I find the echocardiographer and surgical technician positions to be technical and I shall include them in the technical unit. I further find the pharmacy technicians are not technical employees and I shall include them in the support services unit.

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<sup>18</sup> The Employer refers to this position in its brief as “medical staff coordinator.”

<sup>19</sup> This position is also known as certified respiratory therapist. It is mistakenly listed in Joint Exhibit as (CRTT).

<sup>20</sup> The parties agreed at hearing that this position should vote under challenge.

Petitioner contends the maintenance assistant should be eligible to vote in the support services unit, contrary to the Employer, which contends it properly belongs in the skilled maintenance unit. For the reasons explained in detail below, I place this position in the support services unit.

## **DISCUSSION**

### **SUPERVISORY STATUS**

#### **Education Outreach Coordinator**

The Petitioner contends that the education outreach coordinator position should be included in the technical unit, contrary to the Employer which contends it should be excluded as supervisory. For the reasons stated below, I find that the Employer has failed to demonstrate that the employee in this position uses independent judgment in the exercise of any 2(11) authority. Accordingly, I shall include the education outreach coordinator in the technical unit.

Mary Majoy is the education outreach coordinator, also referred to by the Employer as community outreach coordinator. Majoy held this position at Providence hospital prior to its merger with FRMC.

Tami Jackson, interim vice president of nursing services, testified that Majoy directs, supervises, and coordinates classes, functions and activities related to community outreach healthcare education programs that the Employer provides, including cardio-pulmonary resuscitation (CPR) classes, the Care Van (a county-owned traveling van from which services, screening and immunizations are provided at schools and churches) and the “mall walk.”

Jackson stated that Majoy “directs and supervises” the employees who carry out these program services, including PRN<sup>21</sup> nurses (RNs and LPNs), as well as staff nurses who might work for Majoy “if the need arose.” Jackson explained that the nursing staff may perform work on multiple programs, and Majoy assigns them to work at particular programs on particular days. Majoy also assists in evaluating the nurses on her staff.

Jackson testified that Majoy has the “authority to hire staff assuming there is an opening.” Or, if Majoy determined that she needed, for instance, a part time RN to fulfill a new community program, that position would be approved through administration and posted for bidding. Majoy would conduct interviews and “make the selection.” Majoy has the authority to “discontinue the use of a PRN at her discretion” as well as terminate an employee through the “normal protocols available” to any manager. Jackson’s testimony is inconsistent with that of Vice-President of Human Resources, Jackie Forestall, who testified that all hiring and firing must be approved by an appropriate department manager or director as well as be approved through the department of human resources.

Jackson testified that Majoy has an associate’s degree in a healthcare related field. This position does not require a nursing degree.

Section 2(3) of the Act excludes from the definition of “employee” any individual employed as a supervisor. Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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<sup>21</sup> PRN is a job classification for employees who work on an “as needed” basis.

To meet this definition, a person need only possess the authority to perform any one of the indicia listed, provided that the authority is exercised with independent judgment on behalf of management and not in a routine manner. **Clark Machine Corp.**, 308 NLRB 555 (1992); **Browne of Houston, Inc.**, 280 NLRB 1222, 1223 (1986). Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. See, e.g., **Energy Systems & Service**, 328 NLRB No. 125 (1999). The burden of proving supervisory status rests on the party asserting such status. **NLRB v. Kentucky River Community Care, Inc.**, 121 S. Ct. 1861 (2001); **Bennett Industries, Inc.**, 313 NLRB 1363 (1994).

Mere assertions of authority are not sufficient to establish supervisory status. As stated in **Chevron U.S.A.**, 309 NLRB 59, 62 (1992):

[T]he Act requires “evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority.” **Oil Workers v. NLRB**, 455 F.2d 237, 243 (D.C. Cir. 1971). Although “[a] supervisor may have potential powers, . . . theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest powers.” **Id.** at 243. . . . Additionally, the evidence must “fairly” show that “that the alleged supervisor knew of his authority to exercise” the supervisory power. **NLRB v. Tio Pepe, Inc.**, 629 F.2d 964, 969 (4<sup>th</sup> Cir. 1980). (Alterations in original, some citations omitted).

The Board has a duty not to construe the statutory language of Section 2(11) too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. **Hydro Conduit Corp.**, 254 NLRB 433, 437 (1981). “In enacting Section 2(11) Congress emphasized its intention that only truly supervisory personnel rested with ‘general management prerogatives’ should be considered supervisors and not ‘straw bosses, lead men, set-up men, and other minor supervisory employees.’” **Chicago Metallic Corp.**, 273 NLRB 1677, 1688 (1985), *affd. in relevant part*, 794 F.2d 527 (9<sup>th</sup> Cir. 1986).”

There is no evidence that education outreach coordinator exercised any of the primary indicia of supervisory status as defined by Section 2(11) of the Act. In the absence of more concrete demonstration of the use of independent judgment, I do not find persuasive Jackson's conclusory testimony that Majory "assigns work". Any lack of evidence is construed against the party asserting supervisory authority. I find the inconsistent testimony about Majory's authority to hire and fire employees similarly unpersuasive. Where evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory authority has not been established. **Phelps Community Medical Center, 295 NLRB 486, 490-491 (1989)**. Accordingly, I find the education outreach coordinator is not a supervisor under the Act and include the position in the technical unit.

#### **Charge Nurse/Clinic Coordinator**

The Petitioner contends that the charge nurse/clinic coordinator position should be excluded as supervisory, contrary to the Employer which contends it should be included in the RN unit. For the reasons stated below, I find the charge nurse/clinic coordinator is not a supervisor under the Act and include the position in the RN unit.

Sandy McBride is the manager of the Corporate Heath Center, which provides employee health services for the hospital and over 500 other companies, including physicals, drug screens, work-related injury care, health screening, and course instruction. The CHC is open 7 a.m. to 4:30 p.m. Monday through Friday.

Charge nurse/clinic coordinator Katherine (Katie) McGraw reports to McBride. On a daily basis McGraw functions as an RN at the CHC. McBride testified that this position is analogous to the charge nurse position located in the other hospital departments, which the

parties agree should be included in the RN unit. Barbara Wenzinger, director of oncology services, explained that the hospital's Joint Commission, which handles hospital accreditation, requires that a nurse oversee all nursing functions. For that reason, all departments that have nurse staff also have a charge nurse or nurse coordinator to fulfill this oversight function.

In that respect, McGraw makes the daily schedule for the clinic nurses, insures that there is an appropriate staffing level for amount of patient volume, can call in extra staff as needed or send staff home, assists McBride with completing evaluations by providing input on them, employees can go to her with any issues they have, and can initiate verbal discipline, "but works with [McBride] on that." Only McBride may issue written discipline, however.

Since McGraw creates the daily schedule, employees turn in their vacation requests to her. If there is a conflict, McGraw takes the matter to McBride to resolve it.

McBride stated that the decisions to hire, fire, or transfer employees are hers, although McGraw is involved in interviewing candidates. McGraw made one recommendation that McBride hire a particular individual, which McBride declined to do. McGraw may make a recommendation regarding the overall staffing of the clinic but the decision to add staff is McBride's.

It is undisputed that McGraw does not exercise with independent judgment any authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline or responsible direct employees, nor may she effectively recommend such action. The only 2(11) authority she might arguably possess is the authority to assign work since she schedules employees. However, I find the record does not establish that McGraw, in adjusting staffing to meet current patient volume, exercises independent judgment. Rather, she is following in a routine manner the staffing mandates established by higher authority. **Providence Hospital, 320 NLRB 717, 727**

**(1996).** Further, there is no basis on which to conclude that McGraw uses independent judgment in determining which staff to call in or send home since there was no testimony whether McGraw could require employees to follow her directives or what the consequence would be in the event an employee failed to do so. Accordingly, on the basis of the analysis set forth above, I find the charge nurse clinic coordinator is not a statutory supervisor and I will include the position in the RN unit.

### **Nurse Coordinator Cancer Center**

The Petitioner contends that the cancer center nurse coordinator should be excluded as supervisory, contrary to the Employer which contends it should be included in the RN unit. For the reasons stated below, I find the cancer center nurse coordinator is not a supervisor under the Act and I shall include that position in the RN unit.

The cancer center nurse coordinator works in the department of oncology services. Barbara Wenzinger is the department director. The oncology services staff work at both the Main and the South Campus.

Wenzinger stated that this position is analogous to the charge nurse in other departments. Cancer center nurse coordinator Mary Biglin works 8 a.m. to 4:30 p.m. on Mondays, Tuesdays, and Wednesdays, and is paid the charge nurse differential. There are two oncology certified RNs in this department who work part time.

Wenzinger estimated that Biglin spends 95% of her time performing direct patient care. According to Wenzinger, Biglin's duties include scheduling the nurses to "make sure we have appropriate coverage for procedures that are going to be done, reviewing all nursing related policies and procedures and makes suggestions for revisions of those policies, provides



orientation and training of staff, and is a resource to the staff.” Biglin also works with Wenzinger to complete evaluations of nursing staff.

When asked if Biglin has involvement in hiring, Wenzinger stated that she would take Biglin’s opinion into account, as she would of everybody. Biglin may also recommend discipline.

Based upon testimony, I find that the record fails to establish that the cancer center nurse coordinator exercises any of the powers enumerated in Section 2(11) using independent judgement, or effectively recommends such action. As was true of the charge nurse/clinic coordinator discussed, infra, the record does not establish that the cancer center nurse coordinator exercises independent judgment in connection with scheduling employees. Accordingly, I shall include the position in the RN unit.

### **Shift Supervisor and Relief Shift Supervisor**

The Petitioner contends that the shift supervisor and relief shift supervisor positions should be excluded as supervisory, contrary to the Employer which contends it should be included in the RN unit. For the reasons stated below, I find the shift supervisor and relief shift supervisor positions are not a supervisory under the Act and include them in the RN unit.

Interim clinical director Bev Shrickel oversees the four shift supervisors and two relief shift supervisors, who are also referred to by the Employer as house supervisors. These positions are filled by RNs.

On every shift there is one house supervisor on duty for the entire hospital, including both the Main and South Campus. Tami Jackson, interim vice president of nursing, who oversees

Shrickel, stated the position has overall accountability and responsibility to “oversee the operations of the institution, primarily in the nursing area, on a 24/7 basis.”

The house supervisor is a resource for the charge nurses, of which there is always one on duty on each nursing unit. According to Jackson, house supervisors make routine rounds to the various nursing units to “check on the charge supervisor, to see if there’s anything that particular unit needed.” For example, during the “off” shifts when the pharmacy, materials management and medical records departments are closed, the house supervisor would be responsible for retrieving medicine, materials and records as needed. The house supervisor may also be contacted by a charge nurse for advice with patient care. During the day shift, the house supervisor performs duties such as taking care of admissions and assigning beds to patients.

If a house supervisor is faced with an issue that they do not know how to properly respond to, they would contact the nurse manager if it is a matter directly related to a particular nursing unit. The various unit nurse managers also have around the clock accountability for their units, and they carry pagers so that they can be reached at all times. Otherwise the house supervisor would contact Jackson or Shrickel. Jackson testified that she has been contacted by house supervisors numerous times.

When asked if the house supervisor was the highest ranking person on duty at the hospital during off hours when unit managers are not on duty, Jackson stated that she could not say that they were ranked higher than the charge nurses. Rather, she explained, they work together as a team. When asked who the other hospital department staff (besides the nursing units) contact regarding problems during off-hours, Jackson stated they contact the charge nurse on their unit or contact their manager.

The shift supervisors work 40 hours per week (three 12-hour shifts and one four-hour shift). The relief shift supervisors work on a part time basis (one works 20 hours per week, the other 16). They are paid more than charge nurses are, but the record is silent as to the amount of the pay differential.

Jackson testified that the house supervisors do not hire, fire, transfer, layoff, recall, evaluate, promote, or otherwise reward employees, nor do they assign or direct work. They do not possess the authority to discipline employees. If a house supervisor observed conduct that warranted disciplinary action, he or she would document the incident and pass that information to the employee's unit manager.

Based upon the foregoing evidence, I find that the record fails to establish that the house supervisors exercise any of the powers enumerated in Section 2(11) using independent judgement, or effectively recommend such action. I do not find persuasive the testimony that the supervisor's possess overall accountability and responsibility for the institution during off-hours, because the record fails to demonstrate that they possess any additional 2(11) authority during those hours. See, **Rhode Island Hospital, 313 NLRB 343, 349 (1993)** (in determining that a community relations/EEO coordinator was not a statutory supervisor, the Board found the mere fact that the coordinator "runs" the department when the director is absent was not indicia of supervisory status.) Accordingly, I shall include the house supervisors and relief house supervisors in the RN unit.

#### **RN/nurse coordinator**

The Petitioner contends that the RN/nurse coordinator, also referred to by the Employer as the surgical coordinator, should be excluded as supervisory, contrary to the Employer which

contends it should be included in the RN unit. For the reasons stated below, I find the RN/nurse coordinator is not a supervisor under the Act and include the position in the RN unit.

The RN/nurse coordinator position is held by Donna Ostheimer. She works 7 a.m. to 3:30 p.m. She reports to Jackie Horvath, director of the heart institute and interim director of surgical services. Ostheimer works in the general surgery department performing patient care.

There is a staff of six who works on the open-heart surgery team, including Ostheimer who works as a circulating nurse in the open-heart surgery arena. This staff can and does also work in general surgery, but they are the only staff who can work on the open-heart surgery cases.

According to Horvath, Ostheimer will schedule the staff by informing them “which cases they’re gonna scrub and what time to come in to work, especially if we have two cases, so that we don’t have people in overtime mode.” If someone calls in sick Ostheimer “would ask another team member . . . if they can stay over and take call or come into the OR and do the case.” Horvath did not explain whether staff could decline such a request or whether Ostheimer could require someone to work.

Ostheimer also schedules the staff’s call hours. There is an on-call team of three staff per day, 24 hours per day, seven days a week. Ostheimer “talks to the staff and they -- they kind of determine among themselves who wants what day, because some of them only work part-time. So they don’t want to be on-call when they’re not on duty.” Ostheimer creates the call schedule on a monthly basis.

Ostheimer has no authority to hire, fire, lay off, recall or promote. She cannot issue discipline. She can inform Horvath of a problem and Horvath will “take care of the situation.” She provides input on evaluations to Horvath, who conducts the evaluations.

Based upon the foregoing evidence, I find that the record fails to establish that the RN/nurse coordinator exercises any of the powers enumerated in Section 2(11) using independent judgement, nor does she effectively recommend such action. For reasons explained in the foregoing sections, I do not find Ostheimer's authority to assign work or to schedule employees involved the use of independent judgment. Accordingly, I shall include this position in the RN unit.

### **Supervisor Surgical Services/RN**

The Petitioner contends that the supervisor surgical services/RN, also referred to by the Employer as the surgical coordinator, should be excluded as supervisory, contrary to the Employer which contends it should be included in the RN unit. For the reasons stated below, I find the supervisor surgical services/RN is not a supervisor under the Act and I will include the position in the RN unit.

The position of supervisor of surgical services/RN is held by Polly Lynn. The surgical services department does not have a charge nurse, and Franklin testified that Lynn's position is "analogous to a charge nurse." Lynn is paid the charge nurse differential. Franklin explained that Lynn schedules employees and assigns employees to procedures. She provides input into hiring when she sits in on interviews. Franklin stated staff nurses have also sat in on interviews. She and Franklin sit down together to complete staff evaluations where Lynn's role is to provide "input" to Franklin. She has no authority to hire, fire, or transfer employees.

While Lynn's job description states that she "counsels and disciplines employees in an appropriate and effective manner," Franklin testified that Lynn has "talked to employees in regards to certain things. But the actual discipline and written discipline comes from me."

Franklin explained that when she developed the job description in 1998 she was looking at having Lynn perform these duties, but “the charge nurses are -- were uncomfortable at doing this function. So I didn’t enforce that part of it.”

Requests to take time off can be made to either Lynn or Franklin but Franklin must give “final approval.”

Contrary to Lynn’s written job description, she does not assume the responsibilities of the unit manager when Franklin is absent. Instead, director Jackie Horvath assumes Franklin’s duties. Lynn does substitute in the position of surgical tech, LPN and RN as necessary. When Lynn is absent, her position would be rotated among the RNs if staffing permitted, or Franklin would assume Lynn’s duties.

Applying my foregoing analysis on charge nurse duties, I find that the record fails to establish that the supervisor of surgical services/RN exercises any of the powers enumerated in Section 2(11) using independent judgement, nor does she effectively recommend such action. Accordingly, I shall include this position in the RN unit.

### **Charge Registered Respiratory Therapist**

The Petitioner contends that the charge registered respiratory therapist (RRT) should be included in the technical unit, contrary to the Employer which contends it should be excluded as supervisory. For the reasons explained below, I find that the charge RRT is not a supervisor and I shall include it in the technical unit.

Donna Fifield testified that she is the “overlap” respiratory therapist, which is the title of the job she applied and was hired for. She stated that she is not familiar with the term charge

RRT and that it was not a title held by anyone she knew. She stated she did not believe any CRTs or RRTs received a “charge” pay differential.

As the “overlap” person, Fifield works at the main campus 3 p.m. to 1:30 a.m. To get her work assignments Fifield reports to the lead respiratory therapists, or to director Bahnsen, or if they are not present, to the nursing supervisor. There are three leaders, two of whom work day shift, 6 a.m. to 3 p.m. or 7 a.m. to 7 p.m., and the night lead works 11 p.m. to 7 a.m. Fifield testified that she has no involvement with scheduling employees, assigning work, evaluating employees. In her position, Fifield works with respiratory therapy students as do all respiratory therapists.

During the four to eight hours each day that there is no department lead or director present at work, Fifield testified that she is “considered in charge.” In that role employees contact her with problems or questions, for instance, help with charting, or to fill out an incident report. If it is a problem she cannot handle, she will direct employees to call a lead person at home or to check with the nursing supervisor, or she may make the call herself. When a lead person is not present to make work assignments, Fifield testified “we count the treatments, divide them up and decide amongst ourselves, who’s going to take what.”

Jackie Horvath is the director of the heart institute and interim director of surgical services. She oversees several areas, including the CVICU unit, two cardiac catheterization labs, perfusion services, open heart surgery, non-invasive cardiac services, cardiac rehabilitation services, and respiratory therapy services. In all, over 100 employees report to her.

Horvath testified that the charge respiratory therapist “assigns and directs” the work of respiratory therapists in the event the manager and leads are not on duty. Lead therapist Karen Kirtley-Yundt testified that in the event there is not a lead or charge therapist on duty, the

responsibility of assigning and directing work would fall to the most senior therapist. The charge has “input” on the disciplinary and the evaluation process. Horvath testified that Fifield is paid \$0.50 per hour charge differential, although she has not received that differential since April because of a payroll error.

There is a form called a time sheet variance that is available to employees to complete if an employee leaves work early because of low patient count, does not receive a meal break, or works beyond the end of his or her shift. After the employee fills out the form, the form must be initialed by whoever is in charge of the shift, be that a lead person, charge person or the most senior therapist. The Employer keeps track of use of such forms for payroll purposes. Fifield is required to fill out the form and have it approved like the other non-lead therapists. When lead people fill out such a form, they do not need it to be approved by anyone.

Based upon the foregoing evidence, I find that the record fails to establish that the charge RRT exercises any of the powers enumerated in Section 2(11) using independent judgement, nor does she effectively recommend such action. To the extent that there is conflicting testimony regarding Fifield’s exercise of independent judgment in assigning work, I must resolve the discrepancy against the party asserting supervisory status. **Phelps Community Medical Center, supra**. I also note that Fifield’s duty in signing the time sheet variance is ministerial; all she does is verify that the employees worked the particular hours as altered. Additionally, such duty is only secondary indicia of supervisory status; it may be considered but standing alone is insufficient to establish supervisory status. **St. Francis Medical Center – West, 323 NLRB 1046, 1047 (1997)**. Moreover, the fact that Fifield may allow employees to leave early in the event of illness does not appear to involve the exercise of independent judgment because employees appear to have the right to leave in the event of illness. See **Rhode Island Hospital,**



**343 NLRB at 348** and **St. Francis Medical Center – West, supra at 1047**, where the Board held that employees were not exercising independent judgment in granting such time off. Accordingly, I shall include this position in the technical unit.

**Coding/Clerical Services Coordinator, Coding Compliance Coordinator, and Transcription Services Coordinator**

The Petitioner contends that the coordinators of coding/clerical services, coding compliance,<sup>22</sup> and transcription services should be included in the technical unit, contrary to the Employer which contends they should be excluded as supervisory. For the reasons stated below, I find these positions not to be supervisory under the Act and I will include them in the technical unit.

Martha Heesen-May has been the director of medical records for the past six months. She supervises the coordinators of coding and clerical services, coding compliance, and transcription services.

There are two coordinators of coding and clerical services: Janet Sprowl and Andrea McPeck. Sprowl works at the Main Campus and oversees 13 medical records clerks, who are a combination of medical record clerk I and IIs and medical record technician/ART coders. McPeck, who is also referred to as the coding compliance coordinator, works at the South Campus and oversees two medical records clerk II and one correspondence clerk. The parties agree that the medical records clerks and correspondence clerk should be eligible to vote in the Support Services unit and the medical records technician/ART coder should be eligible to vote in the Technician unit.

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<sup>22</sup> It appears, based upon a reading of the record, that the position of coding compliance coordinator may no longer exist. Heesen-May explained that the coding compliance coordinator position was Providence Hospital's title for Andrea McPeck. Since the merger, however, McPeck's functions have fallen "more in line with the coordinator of coding and clerical functions

There are also two coordinators of transcription services: Joann Snoble and Marcia Rollheiser. Snoble works at the Main Campus oversees 17 transcriptionists I and IIs. Rollheiser works at the South Campus and oversees 4 transcriptionists. The parties agree that the transcriptionists I and II should be eligible to vote in the support services unit.

The transcriptionists transcribe physician dictation. Physicians dictate into a phone and the tape recording of the dictation is downloaded into the transcription system. Snoble operates the “manager’s terminal” where she can view all the dictated work in the system that needs to be transcribed and then download the work to the transcriptionists’ terminals. Heesen-May explained that the manager’s terminal downloads the work to the various transcriptionists on a first in, first out basis.

Rollheiser’s explained her duties as including: training new transcriptionists, answering any questions the transcriptionists may have, maintaining equipment, ordering supplies such as copy paper and toner from an outside supplier, getting reference materials and ordering them if necessary, and answering phones. Rollheiser performs transcription when she is not performing her other duties. She estimates that she spends between 30 to 100 percent of her day performing transcription, which varies on a daily basis. Heesen-May estimated that Rollheiser spends 30 to 40 percent of her day performing transcription work.

When the hospital was owned by Providence, Rollheiser had several additional duties including: providing input in the budget, writing and updating policies, procedures, and manuals, and she was “on-call” although she did not explain what that meant. She also handled time cards before Firelands took over. Now the transcriptionists report their hours directly to the director, possibly by e-mail. She performed annual evaluations of employees although she did

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because of the functions that remained at South Campus.” However, the parties listed this position as a separate position on Joint Exhibit 6.

not elaborate whether in conducting the evaluations she had any authority to recommend pay raises or promotions, or whether such recommendations would be followed. Since Providence was acquired by FRMC no one has discussed with her what changes, if any, would occur in her job duties and responsibilities. When asked if she has any involvement in hiring or firing, Rollheiser stated that there has not been any hiring or firing since the hospital became FRMC. However, the record is clear that, about one month prior to the hearing, two transcriptionists transferred to her department from another department, and there was no testimony to suggest Rollheiser had any involvement in those transfers. When asked if she has the authority to recommend discipline, Rollheiser stated “That’s never come into play yet either.” Rollheiser has not yet conducted an annual evaluation, although she stated she had no reason to doubt that she would continue to perform evaluations.

McPeek is a registered health information technologist (RHIT). She is responsible for the entire chart process for the charts of certain departments located on the South Campus. Specifically, she is responsible for all of the documentation, coding, and the physician signatures in the charts. She estimated she spent approximately 10 hours per week performing coding work. Because of her expertise in the medical record profession, she provides guidance to the clerical employees if they have questions about release of information. She also has other duties related to charts, including compiling statistical information for purposes of accreditation, and performing focus studies on patient charts for purposes of quality improvement. McPeek attends monthly meetings run by coordinator Sprowl with the coding staff at the Main Campus.

Under Providence, four coders reported to McPeek. A couple of months after Providence merged with FRMC, those coders relocated to the Main Campus. McPeek could have also moved to the Main Campus but she decided to stay at the South Campus. Under Providence,

McPeck had additional duties of providing input in the budget, writing policies and procedures, updating the coding compliance manual, handling time cards, training new coders, reviewing work for quality and productivity standards, and providing updates to the staff on coding procedures. She also held a monthly coding meeting with the staff in which she might hand out new materials. She testified that she performs none of these duties anymore although no one ever discussed with her what if any changes would be occurring in her job duties with the transition to FRMC.

McPeck testified that she is a lead person for the three clerical employees she works with. McPeck assists in resolving questions involving the performance of the work, but she explained that the “end result though would be a decision made at Main Campus.”

Heesen-May testified that coordinators assign and direct work but did not offer any elaboration. When asked on cross-examination what work McPeck assigns and directs, given that the staff already knows what their work assignments are, Heesen-May stated “she’s just there to answer questions, um, train on new procedures.” When McPeck was asked if she assigned work, she responded that the employees’ duties were set.

Heesen-May stated that coordinators are responsible for the quality and productivity of the work of the employees under them, although the record contained no evidence that coordinators were disciplined in the event of poor quality or productivity.

Transcriptionists are required to meet a production standard of 1200 lines per day minimum. A report is printed out at the end of each workday that states how many lines a transcriptionist has typed. This report is used as a tool in performing evaluations. Rollheiser reports to Heesen-May whether the transcriptionists are meeting production standards or not. Rollheiser also performs routine random quality checks, although she did not specify how often

or what the effect of her checks may be, either positive or negative. Rollheiser agreed that her overall duty was to make sure production goals are met and to make sure the transcription operation functions smoothly on a daily basis.

Heesen-May testified that coordinators have the authority to counsel employees and recommend disciplinary action. The record contained no evidence that any of the coordinators had ever done so. When asked if she had the authority to discipline, McPeck responded that “it has not been established” but stated felt she did not have such authority.

Heesen-May testified that coordinators may release employees from work early due to illness or personal reasons and that, if she is available, she will receive “a courtesy call.” McPeck testified that, on the contrary, if the clerical employees need to request vacation leave or approval to leave work early or come in late, she cannot approve it. She stated Heesen-May has told her that all such matters must be approved “through Main Campus.”

Rollheiser testified that the transcriptionists work hours are a set schedule based upon the hours an employee “bid on.” At the South Campus the transcriptionists work only day shift and every third weekend, which Snoble schedules. Rollheiser does not work any weekend shifts. At the Main Campus there are two or three shifts, and transcriptionists work every weekend. Transcriptionists rotate weekend work and each works every third weekend, which Snoble schedules.

Rollheiser explained that she coordinates granting time off with Snoble at the Main Campus by emailing her or filling out a form on the computer. She explained that they know how many people they have on duty at what times, and whether there is enough coverage so that it “would be convenient to give one of my girls time off.” Rollheiser did not explain whether she or Snoble had the authority to deny a time off request, or what would happen if she and Snoble

disagreed about granting the request. There is no evidence to suggest that these situations ever occurred. When someone calls in sick or fails to show, Rollheiser contacts Snoble so that Snoble can adjust the work accordingly. Rollheiser does not attempt to call in a substitute.

Coordinators conduct annual evaluations for their staff. McPeek performed the annual performance evaluation for Terry Summy, medical records clerk II, in May 2002. McPeek filled out the evaluation form and reviewed it with Summy, signed it and submitted it to Heesen-May for signature, which Heesen-May signed and submitted to the HR department. When asked the purpose of the annual evaluation, Heesen-May stated it was to “ensure that staff members know what their responsibilities are and to address any strengths or weaknesses.” Heesen-May admitted that the evaluation had no impact on Summy’s pay rate.

Regarding hiring and permanent transfers, coordinators conduct the “initial review” and initial interview of candidates, and make a recommendation to Heesen-May. When asked whether she would have authority to interview for purposes of hiring, McPeek stated that she has not been involved in interviewing.

Under Providence, overtime work was not allowed. Under FRMC, Heesen-May testified that coordinators may assign overtime and stated that Rollheiser has done so, although she did not specify when or what happened. Rollheiser testified that, to the contrary, overtime is granted by Heesen-May. Rollheiser explained when the volume of work is high, as it is currently, the Employer “would like for us to do overtime” but it is not mandatory. The transcriptionists work overtime as they desire and at their convenience. McPeek stated that she is not certain whether she has the authority to authorize overtime because “it has never come up.”

Heesen-May holds management meetings with the coordinators as needed to discuss process improvement and to promote open communication and consistency in department

operations. She testified that she held a management meeting soon after assuming the job to apprise the coordinators of her expectations of them, and to deal with staffing issues including attendance enforcement and scheduling lunch breaks. Specifically, Heesen-May informed the coordinators that employees can make up lost work hours when they leave for a doctor visit, and to continue current practices on handling lunch and breaks “until we can discuss further.”

Rollheiser testified that she earns \$16.04 per hour and the transcriptionists earn “fifteen something” per hour. Andrea McPeck testified that she earns \$15.17 per hour.

In response to the question whether McPeck has any involvement in drafting, formulating or modifying policy and procedure, Heesen-May testified that she is “very much involved in assisting me in the development of our policies and procedures for HIPA compliance.” McPeck is the medical record department representative on the HIPA committee, whose purpose is to draft policy for FRMC to comply with that particular act which deals with patient privacy and confidentiality policies that takes effect in April of 2003. The committee has between 15 and 18 members whom Heesen-May and the hospital president and vice president selected. Heesen-May also stated that McPeck “shared her experiences” in creating the charge analyst position at the South Campus so that “we” successfully implemented that position at the Main Campus. McPeck has also been the chair of a couple of process improvement task forces although Heesen-May did not elaborate on what that involved.

Approximately one month after Heesen-May became director, McPeck requested that she be “moved out of management.” Heesen-May testified that declined McPeck’s request for the time being, and it has not been discussed further.

Based upon the foregoing evidence, I find that the record fails to establish that the coordinators of coding/clerical services, coding compliance, and transcription services exercise

any of the powers enumerated in Section 2(11) using independent judgement, nor do they effectively recommend such action. In that regard, I note that their involvement in employee evaluations does not ultimately result in any personnel action or otherwise have any affect on employment. Although the record suggests that these coordinators may have possessed certain supervisory indicia in the past under Providence Hospital, there is no evidence to demonstrate that these positions currently hold and exercise such authority using independent judgment. In the absence of such evidence, I must resolve the ambiguity against the party asserting supervisory status. Applying my analysis from earlier sections regarding scheduling employees, I find that the record also fails to show that the role these employees play in scheduling employees involves the exercise of independent judgment. **Providence Hospital, 320 NLRB 717, 727 (1996)**. Accordingly, I find these positions not to be supervisory under the Act and include them in the technical unit.

Regarding McPeck, while the evidence suggests she may have served in a managerial capacity in the past, the record fails to demonstrate that she is currently a managerial employee according to Board law. Certainly McPeck's work in reviewing data that she will apparently report to a Hospital committee, and her service on such a committee do not of themselves establish that McPeck formulates and effectuates management policies. See **NLRB v. Yeshiva University, 444 U.S. 672 (1980)**. Moreover, absent more concrete and compelling record evidence of managerial authority, I am reluctant to disenfranchise McPeck as I would have to do were I to hold her to be a managerial employee.



## **CONFIDENTIAL STATUS**

The Employer contends that the executive support secretary, medical staff administrative secretary and professional staff secretary<sup>23</sup> positions belong in the support services unit, contrary to the position of Petitioner which contends they should be excluded as confidential employees. For the reasons explained below, I find that the positions are not confidential and I will include them in the support services unit.

There are two executive support secretaries, Donna Smecker and Joan Dancer, who work in the “administrative suite” with the CEO, CFO, COO, and their respective support assistants. Smecker and Dancer each work twenty hours per week and report to Donna Smallwood, assistant to the CEO, whom the parties agree should be ineligible to vote based on her status as a confidential employee.

Jackie Forestall, vice president of human resources, testified that the duties of the executive support secretaries include: providing clerical support to the department directors (such as typing reports and correspondence, taking minutes at various committee meetings including safety, radiation safety, and cancer), preparing a monthly operations report (a report that summarizes the various operational departments’ activities over the course of the prior month, and is distributed to the CEO, CFO, COO, Forestall and vice president of marketing), and maintaining the administrative manual (which is a collection of policies and procedures in the operational departments regarding the scope of care in each of those, and the manner in which tasks are performed).

The job description for the executive support secretary states that the support services this position provides are frequently of a “sensitive nature, such as preparing correspondence and reports in final form . . . .” The job description further stated under the section entitled essential

tasks and duties that the position “[m]aintains complete confidentiality regarding all administrative and patient matters.”

Forestall testified that Smecker and Dancer do not fill in for Smallwood when she is gone, nor do they assist her with any of her typing or files. Instead, Smallwood’s assigned back up is Ruthie Meade, whom the parties agree is ineligible to vote as a confidential employee. The executive support secretaries do not work in the human resources department and do not have access to personnel files. They are not involved in any type of clerical function relating to employee discipline, hiring, transfers, evaluations, benefit administration or personnel matters.

The medical staff office coordinates the activities of the medical staff and is responsible for physician files, credentialing and privileging.

Beth Frank, who oversees the medical staff office, explained that the medical staff secretary, Barbara Newton, processes applications by physicians to become independent physician contractors, which includes verifying a physician’s credentials and performing background checks. Newton also provides clerical support to physicians in pediatrics, obstetrics/gynecology and surgery, and prepares correspondence as needed for those departments. Also, like the executive support secretaries, Newton provides clerical support for various medical staff committees, including: the institutional review board, committee of utilization of osteopathic principles and methods, the compliance steering committee, the assured compliance committee, and the monthly management meeting (which is called by the CEO and attended by directors, managers and supervisors).

Frank testified that Newton may be “remotely involved” with the discipline of employees since she attends compliance steering committee meetings and, as the compliance officer, Frank may be required to recommend discipline, “but the details are not shared at the committee, or to

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<sup>23</sup> This position was referred to at Hearing by Frank as medical staff coordinator.

her.” Newton has no involvement in human resource or personnel functions, and does not have access to personnel records.

The professional staff secretary position, held by Brenda Violet, similarly provides clerical support to physicians in certain departments (internal medicine, emergency, general family practice and radiology) and a variety of medical staff committees, including facilities, credentialing, cardiovascular sciences, physician selection, the physician performance improvement task force (which handles peer review, and also reviews risk management, operational issues and equipment needs), and quality leadership committee.

The written job description for this position states this position is responsible for maintaining physician files to reflect current liability insurance coverage, licensure, disciplinary proceedings, and continuing education in a “secure and private” manner. Beth Frank testified that the committees Violet assists may have “remote” involvement in human resource issues. For instance, the quality leadership committee may deal with quality issues related to HR staffing.

A confidential employees is one who assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations. **Rhode Island Hospital**, 313 NLRB at 350 (1993), citing **B.F. Goodrich Co.**, 115 NLRB 722 (1956) and **PTI Communications**, 308 NLRB 918 (1992). In finding secretaries to a variety of department directors and high-ranking administrators were not confidential employees, the Board in **Rhode Island Hospital** noted that merely having access to files containing confidential material, typing employee evaluations or similar documents, and maintaining personnel files is not sufficient to render a person confidential.

I find that the record fails to establish that the executive support secretary, medical staff administrative secretary or the professional staff secretary work for individuals who formulate, determine or effectuate management's labor policies. Accordingly, these secretaries are not confidential employees and are properly included in the support services unit.

### **PROFESSIONAL STATUS**

#### **Registered Respiratory Therapist (RRT), Respiratory Technician II (CRT) and Clinical educator/registered respiratory therapist**

The Petitioner contends that the positions of registered respiratory therapist (RRT), respiratory therapy technician II (CRT)<sup>24</sup> and clinical educator/registered respiratory therapist<sup>25</sup> should be included in the technical unit, contrary to the Employer which contends they should be excluded as professional. For the reasons stated below, I find the RRT, CRT and clinical educator/RRT positions are not professional, and I shall include them in the technical unit.

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<sup>24</sup> In Joint Exhibit 6, this position is listed, mistakenly, as (CRTT). In its brief, the Employer refers to this position as certified respiratory therapist.

<sup>25</sup> The parties agreed at hearing that this position should vote under challenge.

To be a CRT one must possess at least an associate of applied science degree and have passed the certification test conducted by the National Board for Respiratory Care. To be an RRT, one must be a CRT and pass an additional test also conducted by the National Board for Respiratory Care. To maintain certified and registered status, CRTs and RRTs must complete 12 continuing education credits every two years. While four-year respiratory programs are available, they are not required by the Employer.

There is no difference in the work performed by CRTs and RRTs. There is no difference in the equipment they operate. The Employer does not make any distinction between a CRT and an RRT throughout the hospital.

The Respiratory Therapy department is managed by Judy Bahnsen. Three full-time lead respiratory therapists, Madonna Zeleha, Karen Kirtley-Young, and Tim Roth, whom the parties agree should be excluded from voting as statutory supervisors under the Act report to Bahnsen. All three, as well as Bahnsen, work at the main campus. The leaders perform patient assessments in addition to the work that all respiratory therapists perform. There is also one charge respiratory therapist whose supervisory status was discussed earlier in this Decision.

Respiratory therapists follow physician orders for performing respiratory therapy treatment on patients, which may include performing treatments with nebulizers, managing ventilators, performing incentive spirometry, a post operative breathing exercise, checking oxygen rounds, drawing arterial blood gases as needed and making appropriate documentation. Certain designated respiratory therapists perform pulmonary function tests.<sup>26</sup> Respiratory therapists perform a critical role in the event a “code blue” or “code pink” is called. A “code

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<sup>26</sup> There are two therapists at the Main Campus (one CRT and one RRT), and one (an RRT) at the South Campus who performs all of the pulmonary function tests. This tests measures lung volume and flow to determine what if any kind of lung problem is present. The test is performed in the lab using a machine that provides a reading. A pulmonologist interprets the test results. The ability to perform this test is a specialized skill learned on the job.

blue” is called when a patient is in cardiac arrest, and the respiratory therapist must “maintain the airway.” A “code pink” is called when a newborn is in respiratory distress, most commonly during a delivery. Two respiratory therapists are part of every “code pink” team and may perform suction and intubation as necessary. To perform “code pink” duties, the therapists must receive special training and testing and be “code pink” certified.<sup>27</sup>

Respiratory therapists perform much of their work independently. They receive patient updates from the therapist on the departing shift. They discuss patient care as necessary with the RNs who will then notify physicians. If equipment needs to be serviced, the therapist puts in a work order for clinical engineering or maintenance. They contact the pharmacy if a doctor has ordered a medication that is not normally in inventory. At the South Campus they generally work without direct supervision and are responsible for maintaining inventory by ordering supplies as needed from the Main Campus via computer.<sup>28</sup>

FRMC employs 32 respiratory therapists.<sup>29</sup> They work around the clock on either 8 or 12 hour shifts. On the Main Campus Bahnsen creates the schedule. Scheduling at the South Campus is done by employees signing up to work the shifts as needed. Employees work particular shifts based upon what they were hired to work. To schedule vacation, an employee simply marks their planned absence on the schedule. PRNs pick up the open shifts or, if necessary, the regular staff does, presumably with overtime. If an employee wants a day off that he or she is already scheduled to work, then that person calls around to find a replacement.

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<sup>27</sup> Jackie Horvath testified that RNs, whom the parties agree should be eligible to vote in the RN unit, can perform similar duties to respiratory therapists at “code pinks” and “code blues” in that they can also “manage the airway” and ventilate or “bag” a patient.”

<sup>28</sup> Garlock testified that in the event supplies must be ordered from outside the Employer, she would notify department head Judy Bahnsen who would handle it.

<sup>29</sup> The record shows that there are three or four PRN respiratory therapists who work on an “as needed” basis on the South Campus. The record contains no position by the parties, however, as the inclusion or exclusion of these PRN employees from the unit. Therefore, I find that these employees are eligible to vote to the extent they meet the Board’s standard as set forth in

Dr. Kamal Chaban, an independent intensive pulmonologist with a pulmonary practice dealing with lung diseases, respirator illnesses and critical care, has been on the medical staff at FRMC as an independent contractor physician for almost six years. In the hospital Chaban works with respiratory therapists on a daily basis. He talks with them when he is making his “rounds” with patients, and the respiratory therapists perform the respiratory treatments he orders. When asked if the respiratory therapists perform independent judgment in assisting him in treating patients, he responded “depending on the individual . . . some of them are more aggressive at providing input, advice, recommendations, some are not.” Chaban tries to encourage them to provide feedback about how well a patient is responding to treatment. They are not able to vary treatments without a physician order.

The clinical educator/RRT<sup>30</sup> position is currently held Mary Ellen Collin. Collin’s position differs from that of the other respiratory therapists only in that she is primarily responsible for taking students from Firelands College with her as she works to show them various therapies as part of their study. But, if Collins is not at work to do so, anybody can take the students, and the record demonstrates that the other therapists work with the students from time to time as scheduling requires.

Section 2(12) of the Act defines professional employees as:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic

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**Beverly Manor Nursing Home, 310 NLRB 538 (1993) and Northern California Visiting Nurses Assn., 299 NLRB 980 (1990).**

<sup>30</sup> The parties agreed at hearing that this position should be allowed to vote under challenge. I do not accept the parties agreement. Given the sufficiency of the record testimony on this position I shall nevertheless make a finding on it.

education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) Any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

The **Board's Health Care Rules** specifically provide for the inclusion of respiratory therapists in a technical unit. **284 NLRB 1527, 1553 (1988)**. Contrary to the Employer's urging, I find nothing in fact or law that compels a finding that the respiratory therapists in the instant case are professional employees. Indeed, Board law is replete with cases finding RRTs and CRTs to be technical employees. See, e.g., **Trinity Memorial Hospital of Cudahy, 219 NLRB 215, 216 (1975)**; **St. Elizabeth's Hospital of Boston, 220 NLRB 325, 327 (1975)**; **William W. Bockus Hospital, 220 NLRB 414, 417 (1975)**; **Children's Hospital of Pittsburgh, 222 NLRB 588, 593 (1976)**. In making this finding I note the contrast in the duties and requirements of respiratory therapists with medical technologists for whom the Board has held there is a rebuttable presumption of professional status. See **Group Health Assn., 317 NLRB 238 (1995)** (Board held that medical technologists generally, who are required to possess a Bachelor's degree and ASCP certification, and who commonly also possess advanced graduate degrees, to be professional employees). Accordingly, I include the respiratory therapy and clinical educator/RRT positions in the technical unit.

### **Cardiopulmonary Rehabilitation and Patient Education Therapist**

The Petitioner contends that the cardiopulmonary rehabilitation and patient education therapist should be included in the technical unit, contrary to the Employer which contends it should be excluded as professional.



The cardiopulmonary rehabilitation and patient education therapist is a position within the cardiopulmonary rehabilitation and patient education services department, which is overseen by manager Sheri Green.

The position has been vacant since January 2001. The Employer did not state any intention to fill the position in the near or distant future. Green testified that either a CRT or RRT could fill this position. With the position unfilled, the RNs in the department are performing the duties which otherwise would be performed by this therapist.

The therapist coordinates the entire cardiopulmonary rehabilitation program for patients from the start to completion. When the therapist receives a physician's order to contact and work with a patient, the therapist contacts the patient and sets up an orientation session. At that first session, the therapist conducts a "walk test" of the patient to get a baseline assessment of the patient's level of ability. During the test, the therapist monitors the patient's oxygen saturation level, heart rate, and blood pressure. The therapist then takes a medical history of the patient and state of current health. The therapist and patient together set goals for the patient to achieve over eight to 12 weeks. The therapist instructs the patient on use of equipment, answers any questions, and enrolls the patient in the outpatient program where the therapist will see the patient in acute exercise sessions three times per week.

As indicated previously, in the absence of an incumbent in this position, these duties currently are performed by RNs.

This position is closely akin to that of respiratory therapist discussed above, and I find that it too does not meet the standard of professional under the Act and include it in the technical unit.

**Computer Programmer/Analyst, Network Analyst, Senior Network Analyst, Systems Analyst and Senior Systems Analyst**

The parties disagree regarding placement the following positions: computer programmer/analyst, network analyst, senior network analyst, systems analyst, and senior systems analyst. The Employer maintains these are technical classifications and should be included in that unit. Petitioner contends they are professional and should be excluded. For the reasons explained below, I find these positions not to be professional and I shall include them in the technical unit.

Robert Ayres is the director of information systems. He oversees a department of 15 employees. Steve Ayres<sup>31</sup> is the manager of systems and development. Steve Ayres oversees the computer programmer analyst, the senior systems analyst, three systems analysts, the senior network analyst and the network analyst. The parties agree that Steve Ayres and help desk and operations supervisor Ann Schott should be excluded from voting based on their supervisory status. The parties agree that the unit hardware support technician, application support technician and four computer operators are eligible to vote in the business office clerical.

With respect to the positions of network analyst, senior network analyst, system analyst, senior system analyst, and programmer/analyst, Robert Ayres testified as follows.

The network analyst position is required to possess an Associate's degree and two or more years of relevant work experience, or four or more years of relevant experience. The current network analyst has an associate's degree. The senior network analyst position has the same educational and experience requirements as a network analyst. The current senior network analyst has no formal higher education and received his training through prior work experience, seminars and personal study. Ayres explained that these positions monitor the network

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<sup>31</sup> Steve Ayres and Robert Ayres are brothers.

equipment for proper performance, identify opportunities for improving the network, and work with vendors to upgrade the software. Also, the hospital replaces about 125 computers each year, and the network analyst and senior network analyst, with the help of the hardware support technician, configure the new computers and get them ready for installation.

The education and experience required of a systems analyst is the same as for the network analyst and senior network analyst. The senior systems analyst and computer programmer/analyst are required to possess a higher level of education and experience than the other positions in dispute, that being an associate's degree and four years of relevant work experience, or six years of equivalent work experience.

The systems positions work in system implementation and upgrading. When new applications are installed, they coordinate the installation and training in all hospital departments.

The computer programmer/analyst creates and maintains software for the IBM iSeries computer system using RPG programming language and IBM control language. Ayres explained that this position is responsible for maintaining the system code in the hospital's custom series software and performs a large amount of custom programming. How a program is going to be achieved is "pretty much left to [the programmer] to resolve on his own." Senior systems analyst and two systems analysts who happened to be trained in programming assist with programming as needed.

A recent example of a project these positions worked on was the installation of a new scheduling application two years ago. This application affected multiple departments. The senior network and senior systems analysts worked together with the software vendor and identified hardware needs. The senior systems analyst then made sure that the hardware was installed according to schedule. Then training was held and software loaded. Ayres explained

that, when performing projects, these positions (as well as others in the department) collaborate extensively to get the work done and there is “a lot of overlap” in their work.

These positions are also required to provide “help desk” support to help desk staff and system users, and provide “standby” coverage or are subject to call by “standby” staff. The network analyst and systems analysts are required to participate in the “standby” rotation along with the technicians and computer operators. The “standby” rotation is how the department covers the department’s “help desk”<sup>32</sup> when no department employee is scheduled to be at work. The employee on “standby” carries a pager to be contacted and resolves problems relayed through the help desk remotely, if possible. If necessary, the standby employee will go to the site of a problem. In the event an employee cannot cover “standby” hours they are assigned, it is up to that employee to find a replacement. It is optional whether the programmer/analyst, senior systems analyst and senior network analyst participate in the “standby” rotation. In any case, they may be called to assist in a help desk question.

I find these information technology positions not to be professional and I will include them in the technical unit. In that regard, I find that the work of these employees, while clearly involving the exercise of at least some minimum discretion and judgment, is not predominantly intellectual in nature, nor does it necessarily require knowledge of an advanced type in a field customarily acquired by a prolonged course of specialized intellectual instruction and study. While the computer programmer/analyst position is arguably a closer call, I note that this position, along with the others, does not require any college level education, much less a Bachelor’s degree. Director Ayres explained his belief that “experience with the particular products that we deal with is every bit as valuable as an education would be that tends to be more

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<sup>32</sup> The “help desk” is a central point of contact that any FRMC department may contact for assistance with any computer related problems 24 hours a day, seven days a week.

general in nature . . .” The Board found such lack of a formal higher education requirement to be crucial in finding programmers not to be professional employees within the meaning of the Act in Samaritan Health Services, Inc., 238 NLRB 629, 639 (1978) and Safeway Stores, Inc., 174 NLRB 1274, 1276 (1969).

### **Publications Writer and Public Relations Coordinator**

The Petitioner contends that the publications writer and public relations coordinator<sup>33</sup> should be included in the technical unit, contrary to the Employer which contends they should be excluded as professional. For the reasons explained below, I find that these positions are not professional and I shall include them in the technical unit.

### **Publications Writer**

The publications writer and the public relations coordinator work in the planning and marketing department, under director Ron Parthemore. Vicki Jenkins has been the publications writer for the past three years. She works on a part time basis, 24 hours per week. Parthemore explained that Jenkins’ is paid on an hourly basis because of her part time status, but if the position were to be full-time “it would be my request that it would be salary.” Jenkins reports to the public relations manager, which currently is vacant.

The publications writer job description states that the position prepares written communication to inform and project a positive image of FRMC, both internally and throughout the community, and assists with various marketing functions as needed. Parthemore testified that Jenkins is in charge of placing advertising with radio stations and newspapers, handles some photography, and assists with special events.

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<sup>33</sup> In its brief, Employer refers to this position as “special events coordinator.”

Parthemore listed various publications Jenkins works on. These include the hospital employee newsletter *The Focus*, the hospital president's biweekly letter to employees called *The Connection*, various brochures, physician newsletters, newsletters for the rehabilitation unit, cancer center, mental health program, and any special reports or publications that the hospital needs.

In describing the mechanics of putting together the employee newsletter, Parthemore explained that it would first be discussed in the weekly department meeting. Jenkins would bring an outline of what she thought should be in it, and everyone would have the chance to provide input. Jenkins and occasionally others in the department are involved in writing stories for the publication. Jenkins collects the information to be contained in the publication and sends it out to be printed. When a draft is available everyone in the department reviews it, makes changes as necessary, and Jenkins sends the revised draft back to the printer. Any follow-up phone calls or inquiries from employees or the public regarding articles in the newsletter are fielded by Jenkins.

Under knowledge/skills/abilities, the job description for this position states a bachelor's degree in English or Journalism or "experience may replace bachelor's degree requirement." Jenkins has a bachelor's degree in journalism and her two most recent predecessors also held bachelor's degrees. Parthemore explained that in filling the position in the future he would look for someone who has a lot of experience writing in a university setting because the position is "very demanding" because "they have to know how to write for the audience that they're targeting."

## **Public Relations Coordinator**

Parthemore testified that the public relations coordinator position was created with the merger of FRMC with Providence. Marsha Renande, who holds the position, has worked for the Employer in public relations for the past eight years. She also reports to the public relations manager. Renande is a salaried employee and works 8 a.m. to 4:30 p.m.

The job description states that this position is responsible for event planning and supporting the public relations and marketing efforts of the marketing department, such that a positive public image of FRMC is maintained both internally and externally. The duties for the position include, among other things, writing and producing the president's biweekly letter to employees called *The Connection* (prepared alternately with the publications writer) and other materials, identifying and writing press releases on matters such as childbirth classes, sibling classes, community outreach, and flu shots, arranging to have events photographed, and planning hospital tours.

The Employer holds many special events throughout the year including: women of excellence program, women's health day, a sports medicine program in the spring, a drug awareness program with schools, a quarterly staff office breakfast, and others. The coordinator is involved in screening and selecting potential speakers, creating the program agenda, arranging for food, and purchasing token of appreciation gifts as necessary for event participants. Renande testified that she believed Parthemore had to approve the selection of a speaker because "that comes out of his budget for the speakers."

The job description for this position does not state any specific educational or background requirements, and Renande has no formal post high school education. Parthemore

testified that in filling the position in the future he would look for someone with a bachelor's degree or a significant amount of experience in this area, and with good writing ability.

The Board has found positions similar to those in dispute in the instant case to be non-professional positions. In **Mental Health Center of Boulder County, Inc.**, 222 NLRB 901 (1976), the Board found a public relations director, who had training or experience in preparing materials for the media, preparing documents for the employer, and writing public relations materials, to be a nonprofessional employee. In finding a public relations coordinator to be a nonprofessional employee in **Progress Industries**, 285 NLRB 694, 741 (1987), the Board reasoned that the position had not been shown to meet the criteria in (a)(iv) of Section 2(12) of the Act as one “requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning in a hospital as distinguished from a general academic education.”

I find that the record fails to demonstrate that the positions of public relations coordinator and publications writer require the specialized educational background of a professional employee under the Act, neither do they strike me as predominantly intellectual in nature. Accordingly, I shall include them in the technical unit.

## **UNIT PLACEMENT**

### **Echocardiographer**

The Petitioner contends that the echocardiographer position belongs in the technical unit, contrary to the Employer which contends it belongs in the support service unit. For the reasons stated below, I find the echocardiography position to be a technical position.



Sheri Greene is the manager of cardiac diagnostics and cardiopulmonary rehabilitation and patient education services. She oversees the two hospital's two echocardiographers. She testified that they perform various cardiac diagnostic testing procedures, including cardiac ultrasound testing (echocardiogram), cardiac stress testing, and holter services, although their primary duty is to perform echocardiograms.

The echocardiogram is a test that uses an ultrasound machine to obtain a picture of the heart and surrounding structures. Echocardiographer Schmenk explained that, in conducting the test, she is looking to measure wall thickness, chamber sizes, ejection fractions, speed of blood through the valves and to determine if the "valves are leaking or stenotic." While performing these readings, she performs calibrations with the machine. Schmenk estimated that the test takes about 20 minutes for a healthy patient, and up to an hour for a patient with a heart problem. Before conducting the test, the echocardiographer explains to a patient what to expect during the procedure and why the test is being performed. After completing the test, the echocardiographer prepares a report in which she indicates any abnormalities she found during the test. The report and test videotape is later reviewed and interpreted by a physician. The test itself follows a "standard protocol," with possible minor variations based upon a patient's physical stature.

The cardiac stress test involves explaining the procedure to the patient, hooking the patient up to the heart monitor, taking blood pressure, monitoring the patient during the test, and recording relevant data.

The Holter service procedures include attaching and disconnecting electrodes and monitors, performing a scan and creating relevant documentation. The Echocardiographer also explains these procedures to the patient. A patient wears a holter monitor for a 24 hour period to record their heart rate.

Echocardiographers also assist and fill in for the electrodiagnostic technicians. Greene explained that the echocardiographer position is a “step up” from the electrodiagnostic technician,<sup>34</sup> and the difference between the two positions is “the ability [and] training that’s involved in being able to perform the [echocardiographer performed] exams, knowing the anatomy and physiology to be able to get the proper pictures and to do the exam in the proper way, to be able to give that information to the physician.” When not occupied with tests, echocardiographers may perform clerical tasks such as filing, copying and answering the phone.

The echocardiographers start work at 7 a.m. or 7:30 a.m., and work an eight-hour shift. They are also on call during the week and alternate weekends, and may come in for emergencies.

An echocardiographer must possess an associate’s degree in cardiovascular technology or a minimum of three years experience in cardiopulmonary specialty procedures. Thus, while an associate’s degree is not required by the Employer, Greene stated that it is preferred. Echocardiographers may be registered diagnostic cardiac stenographers, but Greene stated that it too is not required. To become registered, one must complete a degree program and pass the registry test. To maintain registered status, one must complete 30 continuing education credits every three years. A recent advertisement ran by the hospital to fill a vacant echocardiographer position, which Greene testified she provided input on, stated that a registered echocardiographer and/or graduate of a two year cardiovascular technology program was preferred.

Schmenk testified that she is registered and has an associate’s degree in cardiovascular technology. Schmenk testified that the other echocardiographer is also a graduate of a technical program. Schmenk testified that she earns \$19.23 an hour.

The Board has defined technical employees as those “who do not meet the strict requirements of the term ‘professional employee’ as defined in the Act but whose work is of a

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<sup>34</sup> The parties agree that the electrodiagnostic technicians should be eligible to vote in the Support Services unit.

technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through specialized courses.” **Rhode Island Hospital**, 313 NLRB 343 (1993), citing **Barnert Memorial Hospital Center**, 217 NLRB 775, 777 (1975). Technical status is frequently evidenced by the fact that an employee is certified, licensed or registered, although employees may meet the standards of a technical employee without such certification. **Barnert** at 776.

I find the echocardiographers to be technical employees. The Employer requires an associate’s degree in cardiovascular technology or a minimum of three years experience in cardiopulmonary specialty procedures, and prefers a degree or registration. Indeed, the current echocardiographers both hold associate’s degrees and at least one is registered. The Board has found technicians who are required to possess similar levels or experience or education to be technical employees. See **St. Elizabeth’s Hospital**, 220 NLRB 325 (1975) (finding the positions of ultrasound technician, cardiopulmonary technician and cardiac technician, among others, to be technical). This contrasts starkly against the EKG and EEG technicians found not to be technical employees in **St. Elizabeth’s Hospital** on the basis that those positions required a high school education plus minimal additional specialized courses. While not dispositive on the issue, it is worth noting that the Employer pays echocardiographers a wage rate equivalent to that paid to respiratory therapists, a position long held to be technical by the Board and asserted by the Employer to be a professional position.

### **Pharmacy Technician**

The Petitioner contends that the pharmacy technician position belongs in the technical unit, contrary to the Employer which contends it belongs in the support services unit. For the

reasons stated below, I find that the pharmacy technicians are not technical employees and I shall include them in the support services unit.

Robert Boldry is the director of pharmacy services. Boldry is responsible for the day-to-day operation of pharmacy department, which is located in a secure room on the second floor of the Main Campus. There is also a satellite pharmacy located at the South Campus.

FRMC employs approximately 14 pharmacy technicians. There is usually one pharmacist and one technician located at the South Campus and the remainder of the staff work at the Main Campus. The Main Campus pharmacy is open 7 a.m. until midnight during the week and 7 a.m. to 11 p.m. on weekends. The South Campus pharmacy is open from 9 a.m. to 5:30 p.m. on week days and closed weekends.

The pharmacy technicians assist pharmacists by performing the “mechanical duties” associated with distributing medication. When the pharmacy receives a physician medication order, the pharmacist reviews the order and determines whether it is appropriate for the patient based upon the patient’s information in the computer system. The pharmacist enters the medication order into the computer, which generates a label. The pharmacy technicians use the label to fill the order. They remove the proper medication from the shelf or prepare an IV medication mixture and place the medication with the label on the counter to be checked by a pharmacist. After the medication has been checked, sealed in a bag with the label and returned to the counter by a pharmacist, the technician sorts the medication based on the floor it is going to, and delivers it to the appropriate nursing unit where the nurses handle its distribution.

Pharmacy technicians restock the pixus machine, an automated dispensing device for certain medications that allow nurses to identify a patient and remove medication that has been ordered and filled for that patient. Technicians, under the supervision of a pharmacist, also

operate the unit dose repackaging machine that seals a single medication dose in its own package.

The pharmacy technician is required to have a high school diploma or equivalent and six months experience as a pharmacy aide or equivalent duties in a hospital environment. The pharmacy aide position is not an independent position but rather a pharmacy technician in the course of on-the-job training.

The parties agree that the pharmacy contract analyst, whose job is to assist the director in handling pharmaceutical contracts with pharmaceutical manufacturers, purchasing pharmaceuticals as economically as possible, and coding pharmaceuticals for Medicare reimbursement, should be eligible to vote in the technician unit. The individual who holds this position has been scheduled to work as a technician occasionally in the event of a staffing “crisis.” This position requires five years experience as a pharmacy technician and a Bachelor’s degree in accounting or equivalent experience. Boldry testified that this position is hourly and pays “slightly more” than the technician position.

Sherry Helmke has worked for Firelands as a certified pharmacy technician for six and a half years as a full time. She works in the South Campus. Helmke has completed a two year pharmacy technician certificate program, which is not a requirement of the position. Helmke earns 11.89 per hour at her “entry level” seniority status though others earn up to three or four dollars an hour more. The weekend differential is 3% more.

Helmke testified that the Employer prefers, but does not require, a degree or certification. Not all pharmacy technicians are certified although Helmke testified that approximate eight are. To be certified one must pass a federally held nation-wide test encompassing all aspects of retail

and hospital pharmacy. To maintain certification the Certification Board requires 20 continuing education credits and one in law.

The Board has found pharmacy technicians in nearly identical circumstances not to be technical employees. See **Rhode Island Hospital, 313 NLRB at 356**, citing **Meriter Hospital, 306 NLRB 598, 601 (1992)**. The pharmacy technicians in **Rhode Island Hospital** found not be technical employees were required by their employer to possess one or two years of college education or comparable work experience, which is greater than the education and experience required by FRMC prior to being hired as a pharmacy technician in training. Accordingly, I find the pharmacy technicians in the instant case are not technical employees and include them in the support services unit.

### **Surgical Technician**

The Petitioner contends that the surgical technician position belongs in the technical unit, contrary to the Employer which contends it belongs in the support services unit. For the reasons explained below, I find the surgical technicians to be technical employees.

There are nine surgical technicians who work in the surgery department under nurse manager of surgical services Bonita Franklin. Each technician is assigned to a particular surgical specialty. Their primary responsibilities are setting up the room for the surgery by gathering equipment and supplies, ensuring the sterility of the equipment and supplies, counting the sponges, needles and instruments, getting scrubbed and sterile for the surgery and remaining in the operating room during the entire procedure, passing instruments to the surgeon during surgery, and gathering up the instruments, equipment, laundry and garbage from the room after the surgery is completed. The surgical technicians follow physician preference cards in setting

up the rooms, which lists the equipment, supplies, suture and any other needs of each physician for each surgical procedure.

Surgical techs also perform the duty of “first assistant,” which Franklin explained refers to anyone helping the physician as “another pair of hands.” As a “first assistant,” the surgical tech may perform tasks such as tissue handling, providing exposure i.e. retracting to better expose a surgical site, using instruments, and proving homeostasis i.e. suctioning or sponging fluid in the incision area.”

The job description for surgical technician requires a degree from a two-year program. Franklin stated that was the case in 1994, however, now the minimum education and training required is only completion of a nine month vocational program in surgical technology. Franklin also indicated that approximately 90 days of on-the-job training is also needed.

Franklin disagreed with the job description’s representation that a surgical tech must be certified. While Franklin was aware that some of the surgical techs at FRMC are certified, she did not know how many because it was not something the hospital kept track of.

When asked about the term “scrub nurse,” Franklin explained that it is a term used for the person who is in sterile garb, gown and gloves, standing next to the surgeon in the area of the “sterile field” and is responsible for handing instruments to the surgeon as he or she asks for them. The “scrub nurse” duty is just one of the duties that a surgical tech performs. The “scrub nurse” duty can also be performed by an RN, LPN, physician assistant or surgical assistant, and Franklin stated that three LPNs<sup>35</sup> do serve in the capacity of “scrub nurses.”

The surgical technicians perform nearly identical work to those found in **Rhode Island Hospital** to be technical employees. In **Rhode Island Hospital**, the surgical technicians were required to possess only a high-school diploma and some training, which could range from three

months to one year in length. **313 NLRB at 353-354.** In the instant case, nine months vocational training is required. Additionally, the Board in **Rhode Island Hospital** noted the skill required of the technicians, such as “anticipating the needs of the doctor’s performing the surgery” and the discretion in organizing the order and arrangement of the instrument trays. See also **Meriter Hospital**, **306 NLRB 598, 600-601 (1992)** and **William W. Backrus Hospital**, **220 NLRB 414, 418 (1976)**. I therefore find the surgical technicians in the instant case also to be technical employees, and I shall include them in that unit.

### **Maintenance Assistant**

The Petitioner contends the maintenance assistant should be in the support services unit, contrary to the Employer which contends it properly belongs in the skilled maintenance unit. For the reasons set forth below, I find that the maintenance assistant properly belongs in the support services unit.

The maintenance assistant, Sandy Kiefer, works in the plant engineering suite and reports to the director of plant engineering, John Zarvis. This position was newly created with the merger of Providence hospital and FRMC.

The written job description, created in May 2002, describes the essential function of this position as coordinating and maintaining effective office operations, interacting with supervisors to ascertain that purchasing and scheduling are completed, and performing clerical tasks for the facilities department, clinical engineering and security department.

Jackie Forestall, Vice-President of Human Resources, further explained that Kiefer’s duties include: answering the department phone, receiving written maintenance requests and forwarding them to the maintenance department for action, checking the preventative

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<sup>35</sup> The parties agreed that all LPNs should be eligible to vote in the Technical unit.



maintenance files for equipment servicing, such as the fire alarm system, heating and air conditioning, and electrical systems, determining that preventative maintenance and service procedures are scheduled and completed, maintaining the parts and service ordering process by submitting requisitions to the purchasing department and matching packing slips and invoices to purchase orders. Kiefer is also responsible for the “continuous quality improvement” (CQI) process in the maintenance department. In the event a “critical maintenance incident” occurs, such as the failure of a generator, Kiefer would document the incident, the steps taken to correct the problem, and the preventative measures which would be taken to prevent the incident from reoccurring.

Forestall testified that Kiefer regularly interacts with maintenance employees in handling her preventative maintenance and CQI duties, and by attending the monthly maintenance department meetings.

The Board has excluded clerical positions similar to the maintenance secretary in the instant case from skilled maintenance units in **Ingalls Memorial Hospital**, 309 NLRB 393 (1992), **Barnes Hospital**, 306 NLRB 201 (1992), and **Jewish Hospital**, 305 NLRB 955 (1991). In those cases, the Board relied on the **Health Care Rules**, which established that a skilled maintenance unit “should generally include only those employees who perform skilled maintenance work, who fill the position of a trainee, or who serve as helpers or assistants to skilled maintenance employees in the performance of their work.” 53 Fed. Reg. 33900, 33923-24, 284 NLRB 1527, 1557, 1561 (1989).

The Employer cites **West Suburban Hospital**, 224, NLRB 1349, 1350-1351 (1976), **enf. denied** 570 F.2d 213 (7<sup>th</sup> Cir. 1978), to support its assertion that the maintenance secretary properly belongs in the skilled maintenance unit. **West Suburban Hospital**, which predates the

Board's **Health Care Rules**, dealt with the issue of whether a unit consisting solely of a hospital maintenance department was an appropriate unit. **West Suburban Hospital** is, therefore, no longer dispositive on this issue.

### **DIRECTION OF ELECTIONS**

Elections by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have attained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW**.

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by December 30, 2002.

Dated at Cleveland, Ohio this 16<sup>th</sup> day of December, 2002.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello,  
Regional Director  
National Labor Relations Board  
Region 8

470-1733  
470-3300  
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